

**UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF PUERTO RICO**

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In re: PROMESA
TITLE III
THE FINANCIAL OVERSIGHT AND
MANAGEMENT BOARD FOR PUERTO RICO, Case No. 17-BK-3283-LTS
as representative of (Jointly Administered)
THE COMMONWEALTH OF PUERTO RICO *et al.*,
Debtors.¹
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**AMENDED FIFTH STATUS REPORT OF THE AVOIDANCE ACTIONS TRUSTEE
IN CONNECTION WITH THE COURT’S AVOIDANCE ACTION PROCEDURES**

Drivetrain, LLC (“Trustee”), in its capacity as the trustee of the Commonwealth Avoidance Actions Trust, respectfully submits this amended fifth status report (“Amended Fifth Status Report”) in compliance with Part III of the Court’s Avoidance Action Procedures [DE No. 20937, Appendix 2] (“Procedures”), and respectfully states as follows:

RELEVANT BACKGROUND

1. The Court’s Procedures required the Trustee to file a “brief update on the status of each Avoidance Action, including (as to each such action that remains pending at such time) whether the parties are engaging in informal settlement discussions, the schedule established for

¹ The Debtors in these Title III Cases, along with each Debtor’s respective Title III case number and the last four (4) digits of each Debtor’s federal tax identification number, as applicable, are the (i) Commonwealth of Puerto Rico (Bankruptcy Case No. 17-BK-3283- LTS) (Last Four Digits of Federal Tax ID: 3481); (ii) Puerto Rico Sales Tax Financing Corporation (“COFINA”) (Bankruptcy Case No. 17-BK-3284-LTS) (Last Four Digits of Federal Tax ID: 8474); (iii) Puerto Rico Highways and Transportation Authority (“HTA”) (Bankruptcy Case No. 17-BK-3567-LTS) (Last Four Digits of Federal Tax ID: 3808); (iv) Employees Retirement System of the Government of the Commonwealth of Puerto Rico (“ERS”) (Bankruptcy Case No. 17-BK- 3566-LTS) (Last Four Digits of Federal Tax ID: 9686); (v) Puerto Rico Electric Power Authority (“PREPA”) (Bankruptcy Case No. 17- BK-4780-LTS) (Last Four Digits of Federal Tax ID: 3747); and (vi) Puerto Rico Public Buildings Authority (“PBA”) (Bankruptcy Case No. 19-BK-5523-LTS) (Last Four Digits of Federal Tax ID: 3801) (Title III case numbers are listed as Bankruptcy Case numbers due to software limitations).

mediation, and whether the Trustee expects the Avoidance Action to be litigated.” [Procedures, DE No. 20937, Appendix 2, Pt. III, § (i)].

2. In accordance with the Procedures, the Trustee, on September 20, 2022, filed its first status report following the conclusion of the first one hundred and twenty (120) days of the Stay Period. [See DE No. 22331] (“First Status Report”). The Procedures require further status reports “every thirty (30) days thereafter.”

3. On October 20, 2022, the Trustee filed its second status report in accordance with the Procedures. [See DE No. 22649] (“Second Status Report”).

4. On November 18, 2022, the Trustee filed its third status report in accordance with the Procedures [See D.E. No. 22889] (“Third Status Report”).

5. On December 19, 2022, the Trustee filed its fourth status report in accordance with the Procedures. [See D.E. No. 23111] (“Fourth Status Report”).

6. On January 18, 2023, the Trustee filed its fifth status report in accordance with the Procedures. [See D.E. No. 23274] (“Fifth Status Report”).

7. The First Status Report, Second Status Report, Third Status Report, Fourth Status Report and Fifth Status Report included a case update that detailed the Trustee’s progress and efforts concerning undertaking informal settlement discussions and mediations in the pending Avoidance Actions.

8. The Trustee respectfully submits this Amended Fifth Status Report with the exclusive purpose of clarifying that Casillas, Santiago & Torres, LLC (“CST”) represents the Trustee as local Puerto Rico counsel with respect to all Avoidance Actions as to which a report was provided in the Fifth Status Report, with the exception of the Avoidance Action filed against Merck, Sharp & Dohme (I.A.), LLC (“Merck”), Adv. Proc. 19-00276, given the fact that Merck is

a client of CST. As local counsel to the Unsecured Creditors Committee (“UCC”), who would eventually file Adv. Proc. 19-00276 as co-plaintiff along with the Special Claims Committee (“SCC”) of the Oversight Board, CST made it clear to the UCC from the commencement of said attorney-client relationship that Merck was a client of CST and accordingly CST was conflicted from any and all matters that could potentially involve Merck. As such, CST was never involved in any matters involving Adv. Proc. 19-00276, including having access to any documents, files or related information.²

9. In Adv. Proc. 19-00276, the Trustee is represented by Continental PLLC, and its local Puerto Rico counsel is Salichs Pou & Associates, P.S.C.

10. Accordingly, the Trustee respectfully submits below its Amended Fifth Status Report.³

AMENDED FIFTH STATUS REPORT

11. For the Court’s reference, the Trustee respectfully notes that: (i) as with each of the prior Status Reports, the Trustee attaches a case update to this Fifth Status Report as **Exhibit A** (the “Fifth Case Update”), and (ii) all updates within the thirty-day period since the Trustee’s filing of the Fourth Status Report are emphasized using a red font in this Fifth Case Update.

Filed Avoidance Actions

² It should be noted that the Adversary Complaint filed in Adv. Proc. 19-00276 on May 1, 2019 was not signed by CST.

³ On November 14, 2022, the Trustee submitted an *Urgent Uncontested Omnibus Motion for Extension of Deadlines Concerning Scheduling of Mediations* [DE No. 22862 in Case No. 17- 3283] requesting that the Court extend the deadline to schedule mediation from November 21, 2022 to January 20, 2023 (“Extension Motion”). On November 15, 2022, the Court entered an Order Setting Briefing Scheduling on the Extension Motion which required that any opposition to the Extension Motion must be filed by on November 18, 2022 [DE No. 22872] (“Briefing Order”). On November 18, 2022, the Court granted the Extension Motion and extended the deadline to schedule mediation to January 20, 2023. [See D.E. No. 22890].

12. As part of this Status Report, the Trustee summarizes certain data points contained within the attached Fifth Case Update, with a particularized emphasis on updates since the filing of the Fourth Status Report:

- a. There are fifty-two (52) Avoidance Actions that have been filed, which are subject to the Procedures.⁴
- b. The Trustee has sent each of the defendants in the Avoidance Actions multiple invitations to mediate and has continued numerous efforts to schedule mediations in Avoidance Actions that had not yet scheduled a mediation date. The Trustee's efforts to schedule mediations in each of the Avoidance Actions has included hundreds of emails to defendants and their counsel, together with numerous telephone communications.
- c. Consistent with Article V(i) of the Procedures, and excluding those cases in which a notice of dismissal has been filed, the Trustee has now agreed to a date for mediation with each Avoidance Action defendant with the exception of one defendant that has unequivocally stated that it would not participate in mediation.
- d. The Trustee has now submitted thirty-nine (39) Position Papers⁵ to the Avoidance Actions defendants and will continue to submit Position Papers to each defendant in advance of those mediations.

⁴ Pursuant to the Court's *Order Regarding Joint Status Report* [D.E. 57 in Adv. No. 19-00187], Defendant Trinity Metal Roof and Steel Structure Corp. is now also subject to the Procedures.

⁵ As the Trustee noted in the First Status Report, the Second Status Report, the Third Status Report, and the Fourth Status Report the Trustee is continuing to provide its detailed, written position regarding the pending claims in advance of mediation as they are scheduled. These Position Papers are the result of a factual and legal analysis of the issues related to each individual claim, including consideration of any defenses raised by the defendant or tolled party.

- e. The Trustee has already completed mediation with twenty-four (24) defendants. The Trustee reports that it has scheduled continued mediations with at least two (2) defendants in order to further negotiations and resolution of claims against those defendants.
- f. The Trustee has scheduled an additional twenty-one (21) mediations to occur, which includes an increase of nine (9) additional mediations since the Fourth Status Report.
- g. The Trustee is in the process of re-scheduling mediations in two (2) of the Avoidance Actions.
- h. The Trustee reports that it intends to lift the stay and proceed with litigation against a limited number of defendants because informal settlement discussions and mediation have been exhausted without success.
- i. Since the Fourth Status Report, the Trustee has reached an agreement to settle with one (1) defendant prior to mediation and is working to document that settlement. Mediation is still scheduled in that matter so the parties can utilize that time to resolve any issues of the proposed settlement if such still exist at that point.
- j. As part of the Trustee's ongoing effort to engage in settlement and pre-mediation communications with defendants, only one (1) defendant has elected not to mediate and has indicated it will not defend itself from those claims asserted by the Trustee. In light of this communication, the Trustee anticipates lifting the stay as to this one action.

Tolled Claims

13. In addition to the Avoidance Actions Defendants, the Trustee continues to use the established mediation framework as an opportunity to engage with parties subject to tolling agreements (“Tolled Parties”), even though they are not subject to the Court’s Order implementing the Procedures. As previously reported, the Trustee has sent several invitations to the Tolled Parties to mediation, using the same process as for the Avoidance Actions defendants, although acknowledging that participation is voluntary.

14. Mindful of the confidentiality imposed by the tolling agreements, the Trustee can report the following:

- a. The Trustee has invited one hundred percent (100%) of the Tolled Parties to mediation.
- b. Ninety-four percent (94%) have agreed to mediation.
- c. Sixty-one percent (61%) have already scheduled mediation.
- d. Thirty-three percent (33%) are in the process of scheduling mediation.
- e. Seventy-two percent (72%) have received a Position Paper from the Trustee.

15. The Trustee appreciates the efforts of the defendants and their counsel who have been responsive throughout this process.

Dated this 1st day of February 2023

Respectfully submitted by:

/s/ John Arrastia

John Arrastia, Esq. (*Pro Hac Vice*)

Jesus M. Suarez, Esq. (*Pro Hac Vice*)

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the trustee of the Commonwealth Avoidance Actions
Trust in Adv. Proc. 19-00276 only*

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on February 1, 2023, I electronically filed the foregoing motion with the Clerk of the Court using the CM/ECF system, which will send notification of such filing to all appearing parties in the captioned proceeding.

s/ Juan J. Casillas Ayala
Juan J. Casillas Ayala, Esq.